

Assembly Bill No. 1258

Passed the Assembly July 17, 1997

Chief Clerk of the Assembly

Passed the Senate July 11, 1997

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1997, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Sections 483.020, 484.050, 484.090, 485.220, and 492.030 of, to amend and repeal Sections 483.010 and 483.015 of, and to add Section 483.012 to, the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1258, Ackerman. Civil procedure: attachment.

(1) Existing law generally permits the use of a prejudgment attachment in civil actions to recover on certain obligations secured by personal property, or secured by fixtures under the Commercial Code or, in limited cases, secured by real property. Existing law excludes from the amount that may be secured by attachment the value of any security interest held by the plaintiff in the defendant's property to secure the defendant's indebtedness to the plaintiff, together with any decrease in the value of the security by reason of acts of the plaintiff or person to whom the security interest was transferred.

Under existing law these provisions would be repealed on January 1, 1998, and other provisions would become operative that, with certain exceptions, preclude the use of a prejudgment attachment.

This bill would revise and recast these provisions, as specified.

This bill would provide that, in an action to foreclose a mortgage or deed of trust on real property or an estate for years, pursuit of any remedy authorized by the law relating to attachment shall not constitute an action for the recovery of a debt secured by a mortgage or deed of trust or a failure to comply with other specified requirements to proceed first against the security.

(2) Existing law prescribes the procedures to obtain a writ of attachment and to determine the amount that may be attached.

This bill would revise these provisions, as specified.



The people of the State of California do enact as follows:

SECTION 1. Section 483.010 of the Code of Civil Procedure, as amended by Section 1 of Chapter 591 of the Statutes of 1995, is amended to read:

483.010. (a) Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars (\$500) exclusive of costs, interest, and attorney's fees.

(b) An attachment may not be issued on a claim which is secured by any interest in real property arising from agreement, statute, or other rule of law (including any mortgage or deed of trust of realty and any statutory, common law, or equitable lien on real property, but excluding any security interest in fixtures subject to Division 9 (commencing with Section 9101) of the Commercial Code). However, an attachment may be issued where the claim was originally so secured but, without any act of the plaintiff or the person to whom the security was given, the security has become valueless or has decreased in value to less than the amount then owing on the claim, in which event the amount to be secured by the attachment shall not exceed the lesser of the amount of the decrease or the difference between the value of the security and the amount then owing on the claim.

(c) If the action is against a defendant who is a natural person, an attachment may be issued only on a claim which arises out of the conduct by the defendant of a trade, business, or profession. An attachment may not be issued on a claim against a defendant who is a natural person if the claim is based on the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased, or licensed for use, the services furnished, or the money loaned was used by the defendant primarily for personal, family, or household purposes.



(d) An attachment may be issued pursuant to this section whether or not other forms of relief are demanded.

SEC. 2. Section 483.010 of the Code of Civil Procedure, as amended by Section 2 of Chapter 591 of the Statutes of 1995, is repealed.

SEC. 3. Section 483.012 is added to the Code of Civil Procedure, to read:

483.012. Subject to the restrictions of Sections 580b and 580d, in an action to foreclose a mortgage or deed of trust on real property or an estate for years therein, pursuit of any remedy provided by this title shall not constitute an action for the recovery of a debt for purposes of subdivision (a) of Section 726 or a failure to comply with any other statutory or judicial requirement to proceed first against security.

SEC. 4. Section 483.015 of the Code of Civil Procedure, as amended by Section 3 of Chapter 591 of the Statutes of 1995, is amended to read:

483.015. (a) Subject to subdivision (b) and to Section 483.020, the amount to be secured by an attachment is the sum of the following:

(1) The amount of the defendant's indebtedness claimed by the plaintiff.

(2) Any additional amount included by the court under Section 482.110.

(b) The amount described in subdivision (a) shall be reduced by the sum of the following:

(1) The amount of any money judgment in favor of the defendant and against the plaintiff that remains unsatisfied and is enforceable.

(2) The amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint filed in the action if the defendant's claim is one upon which an attachment could be issued.

(3) The amount of any claim of the defendant asserted as a defense in the answer pursuant to Section 431.70 if the defendant's claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations.



(4) The value of any security interest in the property of the defendant held by the plaintiff to secure the defendant's indebtedness claimed by the plaintiff, together with the amount by which the value of the security interest has decreased due to the act of the plaintiff or a prior holder of the security interest.

SEC. 5. Section 483.015 of the Code of Civil Procedure, as amended by Section 4 of Chapter 591 of the Statutes of 1995, is repealed.

SEC. 6. Section 483.020 of the Code of Civil Procedure is amended to read:

483.020. (a) Subject to subdivisions (d) and (e), the amount to be secured by the attachment in an unlawful detainer proceeding is the sum of the following:

(1) The amount of the rent due and unpaid as of the date of filing the complaint in the unlawful detainer proceeding.

(2) Any additional amount included by the court under subdivision (c).

(3) Any additional amount included by the court under Section 482.110.

(b) In an unlawful detainer proceeding, the plaintiff's application for a right to attach order and a writ of attachment pursuant to this title may include (in addition to the rent due and unpaid as of the date of the filing of the complaint and any additional estimated amount authorized by Section 482.110) an amount equal to the rent for the period from the date the complaint is filed until the estimated date of judgment or such earlier estimated date as possession has been or is likely to be delivered to the plaintiff, such amount to be computed at the rate provided in the lease.

(c) The amount to be secured by the attachment in the unlawful detainer proceeding may, in the discretion of the court, include an additional amount equal to the amount of rent for the period from the date the complaint is filed until the estimated date of judgment or such earlier estimated date as possession has been or is likely to be delivered to the plaintiff, such amount to be computed at the rate provided in the lease.

(d) Except as provided in subdivision (e), the amount to be secured by the attachment as otherwise determined under this section shall be reduced by the amounts described in subdivision (b) of Section 483.015.

(e) Where the plaintiff has received a payment or holds a deposit to secure (1) the payment of rent and the performance of other obligations under the lease or (2) only the performance of other obligations under the lease, the amount of the payment or deposit shall not be subtracted in determining the amount to be secured by the attachment.

SEC. 7. Section 484.050 of the Code of Civil Procedure is amended to read:

484.050. The notice of application and hearing shall inform the defendant of all of the following:

(a) A hearing will be held at a place and at a time, to be specified in the notice, on plaintiff's application for a right to attach order and a writ of attachment.

(b) The order will be issued if the court finds that the plaintiff's claim is probably valid and the other requirements for issuing the order are established. The hearing is not for the purpose of determining whether the claim is actually valid. The determination of the actual validity of the claim will be made in subsequent proceedings in the action and will not be affected by the decisions at the hearing on the application for the order.

(c) The amount to be secured by the attachment is determined pursuant to Sections 482.110, 483.010, 483.015, and 483.020, which statutes shall be summarized in the notice.

(d) If the right to attach order is issued, a writ of attachment will be issued to attach the property described in the plaintiff's application unless the court determines that such property is exempt from attachment or that its value clearly exceeds the amount necessary to satisfy the amount to be secured by the attachment. However, additional writs of attachment may be issued to attach other nonexempt property of the defendant on the basis of the right to attach order.



(e) If the defendant desires to oppose the issuance of the order, the defendant shall file with the court and serve on the plaintiff a notice of opposition and supporting affidavit as required by Section 484.060 not later than five court days prior to the date set for hearing.

(f) If the defendant claims that the personal property described in the application, or a portion thereof, is exempt from attachment, the defendant shall include that claim in the notice of opposition filed and served pursuant to Section 484.060 or file and serve a separate claim of exemption with respect to the property as provided in Section 484.070. If the defendant does not do so, the claim of exemption will be barred in the absence of a showing of a change in circumstances occurring after the expiration of the time for claiming exemptions.

(g) The defendant may obtain a determination at the hearing whether real or personal property not described in the application or real property described in the application is exempt from attachment by including the claim in the notice of opposition filed and served pursuant to Section 484.060 or by filing and serving a separate claim of exemption with respect to the property as provided in Section 484.070, but the failure to so claim that the property is exempt from attachment will not preclude the defendant from making a claim of exemption with respect to the property at a later time.

(h) Either the defendant or the defendant's attorney or both of them may be present at the hearing.

(i) The notice shall contain the following statement: "You may seek the advice of an attorney as to any matter connected with the plaintiff's application. The attorney should be consulted promptly so that the attorney may assist you before the time set for hearing."

SEC. 8. Section 484.090 of the Code of Civil Procedure is amended to read:

484.090. (a) At the hearing, the court shall consider the showing made by the parties appearing and shall issue a right to attach order, which shall state the amount to be secured by the attachment determined by the court in



accordance with Section 483.015 or 483.020, if it finds all of the following:

(1) The claim upon which the attachment is based is one upon which an attachment may be issued.

(2) The plaintiff has established the probable validity of the claim upon which the attachment is based.

(3) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

(4) The amount to be secured by the attachment is greater than zero.

(b) If, in addition to the findings required by subdivision (a), the court finds that the defendant has failed to prove that all the property sought to be attached is exempt from attachment, it shall order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220.

(c) If the court determines that property of the defendant is exempt from attachment, in whole or in part, the right to attach order shall describe the exempt property and prohibit attachment of the property.

(d) The court's determinations shall be made upon the basis of the pleadings and other papers in the record; but, upon good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities, or it may continue the hearing for the production of the additional evidence or points and authorities.

SEC. 9. Section 485.220 of the Code of Civil Procedure is amended to read:

485.220. (a) The court shall examine the application and supporting affidavit and, except as provided in Section 486.030, shall issue a right to attach order, which shall state the amount to be secured by the attachment, and order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220, if it finds all of the following:

(1) The claim upon which the attachment is based is one upon which an attachment may be issued.



(2) The plaintiff has established the probable validity of the claim upon which the attachment is based.

(3) The attachment is not sought for a purpose other than the recovery upon the claim upon which the attachment is based.

(4) The affidavit accompanying the application shows that the property sought to be attached, or the portion thereof to be specified in the writ, is not exempt from attachment.

(5) The plaintiff will suffer great or irreparable injury (within the meaning of Section 485.010) if issuance of the order is delayed until the matter can be heard on notice.

(6) The amount to be secured by the attachment is greater than zero.

(b) If the court finds that the application and the supporting affidavit do not satisfy the requirements of Section 485.010, it shall so state and deny the order. If denial is solely on the ground that Section 485.010 is not satisfied, the court shall so state and such denial does not preclude the plaintiff from applying for a right to attach order and writ of attachment under Chapter 4 (commencing with Section 484.010) with the same affidavits and supporting papers.

SEC. 10. Section 492.030 of the Code of Civil Procedure is amended to read:

492.030. (a) The court shall examine the application and supporting affidavit and shall issue a right to attach order, which shall state the amount to be secured by the attachment, and order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220, if it finds all of the following:

(1) The claim upon which the attachment is based is one upon which an attachment may be issued.

(2) The plaintiff has established the probable validity of the claim upon which the attachment is based.

(3) The defendant is one described in Section 492.010.

(4) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

(5) The affidavit accompanying the application shows that the property sought to be attached, or the portion thereof to be specified in the writ, is subject to attachment pursuant to Section 492.040.

(6) The amount to be secured by the attachment is greater than zero.

(b) If the court finds that the application and supporting affidavit do not satisfy the requirements of this chapter, it shall so state and deny the order. If denial is solely on the ground that the defendant is not one described in Section 492.010, the judicial officer shall so state and such denial does not preclude the plaintiff from applying for a right to attach order and writ of attachment under Chapter 4 (commencing with Section 484.010) with the same affidavits and supporting papers.



Approved _____, 1997

Governor

